

1 UNITED STATES BANKRUPTCY COURT
2 FOR THE WESTERN DISTRICT OF NORTH CAROLINA
3 CHARLOTTE DIVISION

4 IN RE:) CONFIDENTIAL PORTIONS
5) INCLUDED
6 GARLOCK SEALING TECHNOLOGIES)
7 LLC, et al,) No. 10-BK-31607
8)
9 Debtors.) VOLUME V-B
10) AFTERNOON SESSION
11
12

13 TRANSCRIPT OF ESTIMATION TRIAL
14 BEFORE THE HONORABLE GEORGE R. HODGES
15 UNITED STATES BANKRUPTCY JUDGE
16 JULY 26, 2013
17
18

19 APPEARANCES:

20 On Behalf of Debtors:

21 GARLAND S. CASSADA, ESQ.
22 Robinson Bradshaw & Hinson, PA
23 101 North Tryon Street, Suite 1900
24 Charlotte, North Carolina 28246
25

JONATHAN C. KRISKO, ESQ.
Robinson Bradshaw & Hinson PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

LOUIS ADAM BLEDSOE, III, ESQ.
Robinson Bradshaw & Hinson PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

RICHARD C. WOLF, ESQ.
Robinson Bradshaw & Hinson, PA
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

1 APPEARANCES (Continued):

2 On Behalf of the Debtors:

3 RAY HARRIS, ESQ.
4 Schachter Harris, LLP
5 400 East Las Colinas Blvd.
6 Irving, Texas 75039

7 CARY SCHACHTER, ESQ.
8 Schachter Harris, LLP
9 400 East Las Colinas Blvd.
10 Irving, Texas 75039

11 C. RICHARD RAYBURN, JR., ESQ.
12 Rayburn Cooper & Durham, PA
13 227 West Trade Street, Suite 1200
14 Charlotte, North Carolina 28202

15 SHELLEY KOON ABEL, ESQ.
16 Rayburn Cooper & Durham, PA
17 227 West Trade Street, Suite 1200
18 Charlotte, North Carolina 28202

19 ALBERT F. DURHAM, ESQ.
20 Rayburn Cooper & Durham, PA
21 227 West Trade Street, Suite 1200
22 Charlotte, North Carolina 28202

23 ROSS ROBERT FULTON, ESQ.
24 Rayburn Cooper & Durham, PA
25 227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

JOHN R. MILLER, JR., ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

ASHLEY K. NEAL, ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

WILLIAM SAMUEL SMOAK, JR., ESQ.
Rayburn Cooper & Durham, PA
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

1 APPEARANCES (Continued.):

2 On Behalf of Interested Parties:

3 Carson Protwall LP:

4 JULIE BARKER PAPE, ESQ.
5 Womble Carlyle Sandridge & Rice, PLLC
6 P.O. Drawer 84
7 Winston-Salem, North Carolina 27102

8 Coltec Industries Inc.:

9 DANIEL GRAY CLODFELTER, ESQ.
10 Moore & Van Allen, PLLC
11 100 North Tryon Street, Suite 4700
12 Charlotte, North Carolina 28202-4003

13 HILLARY B. CRABTREE, ESQ.
14 Moore & Van Allen, PLLC
15 100 North Tryon Street, Suite 4700
16 Charlotte, North Carolina 28202-4003

17 MARK A. NEBRIG, ESQ.
18 Moore & Van Allen, PLLC
19 100 North Tryon Street, Suite 4700
20 Charlotte, North Carolina 28202-4003

21 EDWARD TAYLOR STUKES, ESQ.
22 Moore & Van Allen, PLLC
23 100 North Tryon Street, Suite 4700
24 Charlotte, North Carolina 28202-4003

25 Creditor Committees:

Official Committee of Asbestos Personal Injury Claimants:

26 LESLIE M. KELLEHER, ESQ.
27 Caplin & Drysdale, Chartered
28 One Thomas Circle NW, Suite 1100
29 Washington, DC 20005

30 JEANNA RICKARDS KOSKI, ESQ.
31 Caplin & Drysdale, Chartered
32 One Thomas Circle NW, Suite 1100
33 Washington, DC 20005

1 APPEARANCES (Continued.):

2 Official Committee of Asbestos Personal Injury Claimaints:

3 JEFFREY A. LIESEMER, ESQ.
4 Caplin & Drysdale, Chartered
5 One Thomas Circle NW, Suite 1100
6 Washington, DC 20005

7 KEVIN C. MACLAY, ESQ.
8 Caplin & Drysdale, Chartered
9 One Thomas Circle NW, Suite 1100
10 Washington, DC 20005

11 TODD E. PHILLIPS, ESQ.
12 Caplin & Drysdale, Chartered
13 One Thomas Circle NW, Suite 1100
14 Washington, DC 20005

15 TREVOR W. SWETT, ESQ.
16 Caplin & Drysdale, Chartered
17 One Thomas Circle NW, Suite 1100
18 Washington, DC 20005

19 JAMES P. WEHNER, ESQ.
20 Caplin & Drysdale, Chartered
21 One Thomas Circle NW, Suite 1100
22 Washington, DC 20005

23 ELIHU INSELBUCH, ESQ.
24 Caplin & Drysdale, Chartered
25 600 Lexington Avenue, 21st Floor
New York, New York 10022

NATHAN D. FINCH, ESQ.
Motley Rice, LLC
1000 Potomac Street, NW, Suite 150
Washington, DC 20007

GLENN C. THOMPSON, ESQ.
Hamilton Stephens Steele & Martin
201 South College Street, Suite 2020
Charlotte, North Carolina 28244-2020

TRAVIS W. MOON, ESQ.
Moon Wright & Houston, PLLC
227 West Trade Street, Suite 1800

Charlotte, North Carolina 28202

1 APPEARANCES (Continued.):

2 Official Committee of Asbestos Personal Injury Claimaints:

3 RICHARD S. WRIGHT, ESQ.
4 Moon Wright & Houston, PLLC
226 West Trade Street, Suite 1800
Charlotte, North Carolina 28202

5 ANDREW T. HOUSTON, ESQ.
6 Moon Wright & Houston, PLLC
227 West Trade Street, Suite 1800
7 Charlotte, North Carolina 28202

8 SCOTT L. FROST, ESQ.
Waters Kraus, LLP
9 222 North Sepulveda Boulevard, Suite 1900
El Segundo, California 90245

10 JONATHAN A. GEORGE, ESQ.
11 Waters Kraus, LLP
3219 McKinney Avenue
12 Dallas, Texas 75204

13 Future Asbestos Claimaints:

14 KATHLEEN A. ORR, ESQ.
Orrick, Herrington & Sutcliffe, LLP
15 1152 15th Street, N.W., Columbia Center
Washington, DC 20005-1706

16 JONATHAN P. GUY, ESQ.
17 Orrick, Herrington & Sutcliffe, LLP
1152 15th Street, N.W., Columbia Center
18 Washington, DC 20005-1706

19

20 Official Committee of Unsecured Creditors:

21

22 DEBORAH L. FLETCHER, ESQ.

23 FSB Fisher Broyles, LLP

24 6000 Fairview Road, Suite 1200

25 Charlotte, North Carolina 28210

I N D E X

DEBTORS' WITNESSES	PAGE
LESTER BRICKMAN	
Cross Examination By Mr. Inselbuch	1284
Redirect Examination By Mr. Cassada	1319

E X H I B I T S

DEBTORS' EXHIBITS

NUMBER	ADMITTED
GST0660	1330
GST0661	1330
GST1127	1305
GST1128	1305
GST1150	1330
GST1270	1329
GST1531	1330

1 FRIDAY AFTERNOON, JULY 26, 2013

2 (Court called to order at 2:01 p.m.)

3 THE COURT: Now make sure that we're still -- as I
4 understand, we're still -- the courtroom is still closed to
5 people who have not signed the confidentiality agreement or
6 covered by this agreement.

7 MR. INSELBUCH: Yes, Your Honor.

8 THE COURT: Okay. So anybody else that has not
9 signed or otherwise been subject to the confidentiality
10 agreement.

11 Okay. You may proceed.

12 MR. INSELBUCH: May I proceed?

13 THE COURT: Yes.

14 LESTER BRICKMAN

15 CROSS EXAMINATION (Cont'd.)

16 BY MR. INSELBUCH:

17 Q. In your direct testimony and in some of your cross,
18 Professor Brickman, you assert that one of the reasons why you
19 believe the plaintiffs were at least dissembling were because
20 their names were listed on 2019 forms for bankrupt companies
21 to which they did not admit knowledge of exposure to their
22 products. Do you recall that testimony?

23 A. Yes, I recall that I testified about 2019 statements on
24 several occasions.

25 Q. And basically, you're saying that when a client's name is

1 placed on a 2019 form, it's some form of certification that
2 the client has in hand proof of its claim against the bankrupt
3 entity.

4 A. If that's a question, my answer is no.

5 Q. You're not saying that.

6 A. That's not my contention. My contention --

7 Q. What is your contention about the 2019?

8 A. My contention is that a 2019 statement is a claim of
9 exposure and that the client has a claim -- well, that he's a
10 creditor -- let me -- let me start again.

11 That he is a -- has a claim of exposure, that every one
12 of the names listed where the attorney represents more than
13 one claimant, every one of the claimants listed has a claim
14 valid under state law against that debtor.

15 Q. And is he saying that he has that proof in hand or that
16 as a matter of good faith belief he thinks he can prove it up
17 if he has to?

18 A. He has a claim. That is to say, he has a good faith
19 assertion that -- that he was exposed to the product of the
20 debtor and that that exposure caused his disease and that he
21 is owed damages.

22 Q. And when you say -- what you mean by good faith, does
23 that mean that he had some proof of that in hand?

24 A. Either that he has proof or that he believes he will have
25 proof.

1 Q. But in fact, it is not an assertion that he has the
2 proof.

3 A. It's an assertion that he has -- that there's a claim.
4 And when you say "proof," if the -- if the claimant claims
5 exposure and the proof can be asserted by an affidavit,
6 then -- and he makes -- and he lists the claimant on the 2019
7 form, then that's an assertion of a claim and I suppose that's
8 a statement that he has proof.

9 Q. Well --

10 A. The client -- I'm sorry, let me just supplement that.
11 The claimant is claiming that he was exposed to the product.
12 I believe that that is inherent in the 2019 listing.

13 Q. I know that you've disclaimed being an expert on the
14 bankruptcy law and we have, of course, sitting in the court
15 the only important expert on the bankruptcy law. But I would
16 point out -- ask you whether you read a discussion of what a
17 2019 form is in the context of an asbestos bankruptcy by Judge
18 Judith Fitzgerald?

19 A. I did.

20 Q. All right. And is there anything in what she had to say
21 that would support the notion that when a client's name is put
22 on a 2019 form, the client should have some proof of the claim
23 ultimately to be manifested?

24 A. Her understanding or her statement about 2019 forms is
25 inconsistent with what the 2019 form says. I'm not

1 interpreting the words. The words are very clear and they
2 state what I state they stated, and I'd be happy to point that
3 out to you if you'll give me some 2019 forms.

4 Q. Well, let's see what Judge Fitzgerald said and then you
5 can say what you think is inconsistent.

6 A. Well, can I have a 2019 form so I can show you the
7 inconsistency?

8 Q. Let's see what Judge Fitzgerald had to say.

9 This is at, Your Honor, 462-BR-88, and I'm going to read
10 at -- beginning at page -- what's the page number? Ah, 95.

11 And I have -- I think I should preface this by you
12 understand that asbestos claims are different in quantity and
13 quality in a bankruptcy than what are the ordinary
14 expectations of creditors' claims; isn't that correct?

15 A. I don't know if I'm competent to answer that.

16 Q. Typically there's no bar date, is there, for asbestos
17 personal injury claims?

18 A. More often than not there is no bar there. I've seen
19 some bar dates, but I've also seen several bankruptcies where
20 the court refused to establish a bar date.

21 Q. Well, there is no bar date in this case, is there?

22 A. I'm not -- I'm not aware.

23 Q. Because a bar date -- what a bar date triggers is the
24 filing of proof of claim forms and that triggers a process of
25 allowance and disallowance of claim forms that we don't do in

1 the bankruptcy when we're involved with asbestos personal
2 injury claims.

3 A. Well, I'm neither agreeing nor disagreeing.

4 Q. Well, let's see what Judge Fitzgerald said.

5 MR. INSELBUCH: I don't know whether you can read
6 that, Your Honor. I can barely make it out, but I'll read it
7 out loud.

8 "In the context of bankruptcy asbestos personal
9 injury cases, when a 2019 is filed, a lawyer typically has a
10 number of clients who have been, or assert that they have
11 been, exposed to asbestos and who often may have sustained
12 those exposures in multiple contexts. For example, an
13 employee of one company may have worked with products of
14 multiple asbestos manufacturers, producers or distributors or
15 may have worked for more than one asbestos company. In
16 addition, individuals will often seek legal advice
17 notwithstanding the absence of disease or symptoms, simply
18 because of the possibility of exposure and because the latency
19 period for certain asbestos diseases can be decades. Thus,
20 notwithstanding the use of the word 'creditor' in Rule 2019,
21 individuals seeking legal counsel with respect to asbestos
22 exposure may or may not have current claims and may or may not
23 ever qualify as a claimant under Section 524(g). Nonetheless,
24 they are represented by an attorney who is required to file a
25 2019 statement listing all those he represents who are or may

1 be claimants, even if the claims are never allowable or
2 allowed.

3 "Statements under 2019 are attorneys' statements of
4 authority to represent multiple clients as listed thereon.
5 They are not claims and are not affirmative statements by the
6 clients themselves. Counsel are in a predicament. If they
7 fail to file the statements (or exclude a client who has not
8 yet but eventually does assert a claim against the debtor, or
9 neglect to amend a 2019 when taking on a new client or losing
10 a client), counsel may face substantial penalties that could
11 prejudice their clients."

12 Skipping a little bit along. "The 2019 statements
13 are not and do not substitute for proofs of claim or ballots
14 of creditors who vote on a plan of reorganization."

15 Okay. If -- just a little bit more. "In the
16 Pittsburgh Corning case this court heard a similar 2019 motion
17 filed by Garlock before the current 2019 motions were filed.
18 We explained: A 2019 statement is a statement by a lawyer and
19 it says that these are the people that I represent in this
20 case. That's it. It doesn't give you any information about
21 what evidence the clients have in support of their claims and
22 it doesn't tell you whether the lawyer actually is ultimately
23 even going to file a claim in the case or is going to file a
24 ballot in the case. So let's assume some lawyer has a list of
25 clients wanting to make sure that he doesn't get faulted for

1 being under inclusive, but he hasn't made any decisions at all
2 as to whether those claimants will ever do anything in this
3 case, much less file a proof of claim or anything else, and
4 then the only decision that claimants have made, the clients
5 and the lawyer for those clients, is whether or not they have
6 enough of a claim in this case that they want to vote and
7 that's in the ballot material."

8 Have I read that correctly?

9 A. I assume so.

10 Q. That's how Judge Fitzgerald views the 2019 form in an
11 asbestos personal injury bankruptcy.

12 A. I'm sorry, is that a question?

13 Q. Do you agree with that?

14 A. I agree that you read it. I don't -- I think -- let me
15 respond by simply quoting the Pittsburgh Corning bankruptcy
16 2019 form. It says, "I have personal knowledge of the facts
17 set forth herein. I make this verified statement pursuant to
18 Rule 2019 of the Federal Rules of Bankruptcy Procedure and the
19 court's order of October 22, 2004."

20 Then skipping over to paragraph numbered 4. "As of the
21 date of this verified statement, the firm represents thousands
22 of personal injury claimants (the claimants or individually
23 claimant) who have been injured by asbestos products
24 manufactured, marketed, distributed, sold or produced by
25 Pittsburgh Corning Corporation (debtor) and others and thus

1 hold claims against inter alia the debtor."

2 And finally, skipping over to paragraph numbered 6, "The
3 nature of the claim held by each claimant is a personal injury
4 tort claim for damages caused by asbestos products
5 manufactured by the debtor."

6 Q. Let's take one hypothesis. Suppose the lawyer has a
7 client that is diagnosed with mesothelioma two days before the
8 bankruptcy is filed; and he comes to his office the next day,
9 the day before the bankruptcy is filed. On what basis should
10 the lawyer include that client's name in the 2019 form or not
11 include it in the 2019 form?

12 A. I would consult a bankruptcy lawyer.

13 Q. Well, okay. Well, I would consult Judge Fitzgerald.

14 A. And I read those statements.

15 Q. Let's talk about the ballots. Have you ever read through
16 the ballot materials for any one bankruptcy?

17 A. I've read a lot of ballots.

18 Q. This is just -- this is Owens Corning, and this is
19 without the plan attached or the disclosure statement
20 attached. This is just a ballot.

21 A. I discovered after reading some of the ballots that there
22 was specific language that I looked for so I didn't have to
23 read the entire ballot.

24 Q. We're going to look at the language.

25 A. I'm sorry?

1 Q. We're going to look at the language.

2 When somebody votes in a bankruptcy, what is it that you
3 say they must know or have on hand in order to vote?

4 A. It's a certification by counsel that the named -- the
5 persons for whom he's casting a ballot have a claim against
6 the debtor because of exposure to asbestos-containing products
7 for which the relevant debtor is responsible.

8 Now, for example, on the Owens Corning 2006 Class A7-M
9 ballot, requiring the attorney to certify under penalty of
10 perjury that each claimant listed in the master ballot "has
11 experienced Owens Corning fiberglass exposure," then skipping
12 some words, "with respect to which Owens Corning has legal
13 liability."

14 Q. And it is your testimony that when someone votes, they
15 are saying that they have on hand proof of that liability?

16 A. I'm saying they have a claim. That's what the ballot
17 says. The ballot is a certification by --

18 Q. I'm not asking you whether they have a claim. I'm asking
19 you whether they have certified whether -- certifying whether
20 or not they have on hand proof of that claim.

21 A. Well, I don't make a distinction between claim and proof.
22 I don't think it's a proof of claim. It's a claim. It's an
23 assertion, a certification of a claim. And that's -- you
24 know, again, I'm treading on dangerous water here when I get
25 into bankruptcy law. But my understanding is that it has to

1 be a valid claim under state law. And either you're -- when
2 you file a 2019 statement, for example, either you're an
3 equity holder or you're a creditor. If you're a creditor,
4 you're claiming you're owed money. If you're owed money, you
5 have a claim. That's what you do when you put in a 2019
6 statement.

7 Q. Going back to the reason we're here is you're arguing
8 that in the tort case where they didn't supply evidence of
9 exposure to Owens Corning, for example, you can make that
10 proof by saying they filed a proof of claim form so they must
11 have had that evidence and they denied it in the tort system.
12 That's what you're saying, isn't it?

13 A. No.

14 Q. What are you saying, then, about the proof of claim form?

15 A. I am saying that when a counsel files a 2019 statement,
16 let's say in Pittsburgh Corning, and thereafter files on
17 behalf of that claimant a tort claim and denies exposure to
18 unibestos, the Pittsburgh Corning product that contains
19 amosite, amphibole asbestos, in large percentages, that those
20 are inconsistent statements.

21 In the ballot the counsel is asserting that he has a
22 claim of exposure by the claimant to the products of the
23 debtor. In the interrogatory and in the deposition and at
24 trial, they're denying any such exposure. Those are
25 inconsistent.

1 Q. They're inconsistent when they say they don't remember
2 who made the product that rained on their head, but their
3 lawyer can figure out who probably did and says he has a good
4 faith belief that sooner or later he'll be able to find that
5 proof and he wants to file a claim form.

6 A. Well, I don't accept the sooner or later part of your
7 question.

8 Q. Well, let's assume --

9 A. Let me respond. I'm not sure about the rest of it, but
10 if counsel is arguing at trial that there is -- that the
11 claimant did not have exposure to unibestos but has previously
12 filed a 2019 statement or a ballot saying that he did have
13 exposure, I think that's inconsistent. I think that's a
14 violation of the ethical rules. I think that's deceitful.

15 Q. And if he's arguing at trial that the defendants have put
16 in no proof of unibestos exposure, that's not deceitful.

17 A. If he's arguing that the claimant's testimony that he was
18 not exposed to unibestos should be taken by the jury as
19 evidence that the jury should accept that testimony, then he
20 is, I think, violating the rules of ethics in putting forth or
21 supporting testimony that is simply deceitful.

22 Q. Let me ask it this way. Two possibilities. One
23 possibility is that the plaintiff has from his own knowledge
24 the ability to say I was exposed to Owens Corning product,
25 whatever that is, Kaylo or something. On the other hand, he

1 doesn't know that it was Kaylo, the plaintiff. He knows it
2 was insulation product. His lawyer knows probably I'll be
3 able to prove that's Kaylo down the road.

4 Now, think of it in terms of the debtor in the bankruptcy
5 deciding who votes. Does the -- the people who vote are
6 members of a class, are they not?

7 A. They're asserting claims as creditors.

8 Q. But they vote by class in a bankruptcy, do they not?

9 A. Well, you're getting above my pay grade again.

10 Q. Well, let me suggest to you they do vote by class. And
11 in fact, the class that votes -- the class of asbestos
12 personal injury claimants that votes is the same class of the
13 plan that is going to be subject to the Section 524(g)
14 injunction. Do you know that?

15 A. Yes.

16 Q. Now, would it be in the interest of the debtor to be
17 saying, ah, we're only going to include in this class the
18 people who have on hand proof that they were exposed to our
19 products. Other people shouldn't vote. So they can't be
20 enjoined because they didn't have the proof yet.

21 A. I simply don't have an understanding about what debtor's
22 role is in 2019 -- or rather, ballots, whether the ballot is
23 to accept the plan of reorganization. The 524(g) requirement
24 sets forth certain super majorities and so on, voting by
25 dollars, et cetera.

1 But I don't understand what you're saying about the role
2 of the debtor. I'm not aware that the debtor does -- has a
3 role in the balloting in terms of what actually happens.

4 Q. Who do you think drafts the ballots?

5 A. I simply don't know.

6 Q. Who do you think drafts the plan of reorganization?

7 A. The plaintiff's counsel.

8 Q. Really? What makes you think that?

9 A. Well, it depends on whether or not the debtor has made a
10 deal, reached an accommodation with the plaintiff's counsel.
11 But one way or another, the plan is written -- the plan of
12 reorganization that's adopted is written by plaintiff's
13 counsel.

14 Q. Really? That's news to me.

15 The 524(g) injunction, for whose benefit is that? Is
16 that for the benefit of the plaintiffs or the debtors?

17 A. Well, it's for the benefit of the debtor and the
18 plaintiffs.

19 Q. But it's for the benefit of the debtor so when it gets
20 discharged in bankruptcy, there will never be any more
21 asbestos claims against it.

22 A. And it's also for the benefit of the claimants so that
23 there's adequate funds to pay the pending and future claims.

24 Q. And the reason for that is because the debtor is
25 protected. The debtor's equity values and debt indentures are

1 going to be valuable, correct? That's why it's in the
2 interest of the claimants.

3 A. Well, it's because of the -- it's because of the latency
4 period and the fact that there are going to be future
5 claimants who are not yet identified because they have not
6 manifested with disease and so that's why you have the special
7 524(g) procedure that's unique to asbestos litigation.

8 Q. And the present claimants are defined by the definition
9 of the class, are they not?

10 A. I don't know.

11 Q. And is it not the same definition that determines who
12 votes?

13 A. Again, I don't know.

14 Q. So you don't know. But if I were to suggest to you that
15 any debtor who tried to have the definition of the class that
16 votes as broad as possible to be as protective as possible
17 after discharge, would that seem wrong to you?

18 A. I wouldn't take a position either way.

19 Q. But do you take a position that when -- by the definition
20 of this plan, the people that are voting have proof in hand of
21 their claims against the debtor when they vote?

22 A. I would simply reassert the answer I gave earlier without
23 rereading the content of the ballot --

24 Q. Okay.

25 A. -- in Owens Corning.

1 Q. Let's talk about the claim forms.

2 MR. CASSADA: Which claim?

3 MR. INSELBUCH: Proof of claim forms. Trust claims.

4 Q. We have some semantic differences about what these things
5 mean. But basically, you're saying that when they file a
6 proof of claim form with the trust, they are asserting a
7 claim; and when they didn't tell people that in the tort
8 system, they were dissembling in some way.

9 A. That's not what I said.

10 Q. I'll let you say it again. What did you say about that?

11 A. About what?

12 Q. About proof of claim forms and what they prove.

13 A. Proof of claim forms? I don't think I said anything
14 about proof of claim forms.

15 THE COURT: Talking about trust claims.

16 Q. I'm sorry, you called them trust claims.

17 A. Okay.

18 Q. The trusts call them proof of claims. Do you want me to
19 call them trust claims? I'll call them trust claims.

20 A. You can call them proof, just so long as I know what
21 you're talking about.

22 All right. So let me hear the question again.

23 Q. Well, I'll try it again. You assert that when one of
24 these claimants files a proof of claim form, he is asserting
25 something that he has either denied or failed to tell the

1 defendants in the tort system when he doesn't -- doesn't
2 inform the defendant that he's filed this proof of claim form.

3 A. If he has an obligation to disclose to the plaintiff in
4 the tort system that he has filed a proof of claim form, as is
5 the case in many, if not most, of these tort cases, either
6 because of the standing court orders or the CMOs or the
7 standard interrogatories or the deposition questions or the
8 testimony at trial, and he has not made that disclosure of
9 having filed a claim with the trust, that is deceptive, that
10 is deceitful in that he is -- if he's claiming no exposure to
11 a product where he has filed a proof of claim form that he did
12 have exposure to that product.

13 Q. You're saying that had he disclosed the proof of claim
14 form, the tort defendant would have learned something that the
15 tort defendant didn't know yet.

16 A. Yes.

17 Q. Well, let's test that.

18 Do you know what trust site lists are? I think you
19 mentioned them on direct examination.

20 A. I didn't hear that word. Could you --

21 Q. Trust site lists. Approved site lists.

22 A. I'm just not hearing the word, I'm sorry.

23 THE COURT: Site lists.

24 THE WITNESS: Oh, site list. I'm sorry. Thank you.

25 Q. Site lists.

1 A. Yes.

2 Q. Sorry. Is it fair to say that the trust is, in effect, a
3 settled defendant, like a settled defendant?

4 A. I don't know whether it's fair or unfair. I simply have
5 no opinion on that.

6 Q. Well, before the bankruptcy of any one of these entities,
7 there were lots of plaintiffs suing this entity as a defendant
8 and the plan is, in effect, a resolution of all those claims,
9 present and future, a settlement of all those claims present
10 and future. And because we can't sort them all out one by one
11 in the bankruptcy court, we create a vehicle called a trust
12 that will then one by one work their way through these claims
13 and allocate to them a portion of the settlement amount in
14 gross that has been deposited in the trust. Isn't that what's
15 going on?

16 A. Well, I agree in part, which is to say it's a resolution
17 of the pending and future claims. I don't agree necessarily
18 that it's a settlement. I don't -- I wouldn't use the term
19 settlement in that context. I use settlement in a different
20 context. So I wouldn't accept that as a statement of what
21 a -- the adoption of a plan of reorganization does.

22 Q. All right. Let's look at one of these trust claims.
23 Let's look at the Taylor case, for example.

24 I believe if you read Mr. Cassada's memo, you'll see that
25 the contention with respect to Mr. Taylor is that they say

1 that the exposures in the trust claims were not disclosed to
2 Garlock. Is that right? I don't want to go through all of
3 their materials and get to that if I don't have to if you'll
4 concede that.

5 A. Yes. That and more.

6 Q. And you agree with that, do you not?

7 A. I agree that he did not identify in his responses to the
8 standard interrogatories certain exposures evidenced by the --
9 by 2019 statements and trust claims.

10 Q. And one of the trust claims that he didn't disclose, am I
11 correct, is one that he filed with AC&S.

12 A. I don't have information about which of the trust claims
13 he filed.

14 Q. Well, didn't Mr. Cassada's firm give you a long
15 memorandum with a chart --

16 A. Yes.

17 Q. -- that will tell you?

18 A. But as I testify here right now, I have no recollection
19 of which trust claims he filed.

20 Q. Well, you can look at the memorandum if you want, but I
21 will represent to you that among the trust claims that
22 Mr. Cassada's firm asserted he didn't disclose was a claim
23 against AC&S. And you can check that or accept my
24 representation.

25 A. Yes, I accept it.

1 Q. So what they're saying is that Garlock's lawyers say that
2 the exposures in those trust claims were not disclosed to
3 Garlock.

4 A. Yes, in the standard interrogatory responses.

5 Q. Okay. Now, I'm going to throw up on the board Mr.
6 Taylor's answers to interrogatories, set one. And these
7 interrogatories were served on Garlock, were they not?

8 A. I presume so.

9 MR. CASSADA: Are these interrogatories that were
10 produced?

11 MR. INSELBUCH: Oh, yeah. This is your Exhibit
12 1128.

13 Q. And if you want to turn to the back, there's a service
14 list. There's a proof of service with an affidavit and a list
15 on the back listing a whole bunch of people who got served
16 with the affidavit -- with these interrogatories, and among
17 them is Garlock Sealing Technologies, LLC, Law Offices of
18 Glaspy and Glaspy.

19 So Garlock had these interrogatory answers, did they not?

20 A. Yes.

21 Q. Now, Mr. Taylor was in the navy, was he not?

22 If you turn to page 8 of these interrogatories: "Have
23 you been a member of the armed forces?"

24 Answer: "Yes, U.S. Navy."

25 And he served at the Hunter's Point Naval Shipyard.

1 A. That's what it says. That's what the response says.

2 Q. He says, "I served at the Hunter's Point Naval Shipyard,"
3 right?

4 A. Yes.

5 Q. And he says, "I served at the Long Beach Naval Shipyard."
6 Does he say that?

7 A. Yes.

8 Q. And then if you go a little bit further along, I think
9 it's page 20 of these interrogatories. He served also aboard
10 the USS Hornet for a period of time; is that right?

11 A. He lists that under job sites, yes.

12 Q. Now, there's another set of interrogatories,
13 interrogatory set two.

14 This is your GST1127 if you want to check.

15 And this one also was served on Garlock. If you look on
16 the back, there's a service list and it gets served on Garlock
17 Sealing Technologies at Glaspy and Glaspy.

18 And on page 2 of these interrogatories, he says he served
19 as a fireman, apprentice fireman, and machinist mate while
20 working in the United States Navy, USS Hornet.

21 Then he goes on to say, "His work required him to remove
22 the aforementioned equipment and reinstall it. Some of the
23 repair work took place inside, on board the ship; other
24 equipment was removed and repaired on the deck; other
25 equipment was removed and taken to the machine shop for

1 repairs where plaintiff and others worked on it. Most of the
2 equipment was insulated with block, mud and blankets.
3 Plaintiff himself would usually remove the insulation from the
4 equipment he worked on, and insulators would reinsulate the
5 equipment afterwards. This work required the insulators to
6 saw the block insulation, as well as mix dry mud with water
7 for application. Both the sawing and the mixing created a lot
8 of dust which he inhaled. The insulation material was always
9 in the environment where he worked because it would fall to
10 the ground during removal and application and remain there.
11 Plaintiff's work was primarily in compartments, including the
12 engine rooms and the pump rooms. This work was very dusty and
13 dirty, which dust plaintiff inhaled. In his work removing and
14 replacing gaskets on the above-mentioned equipment, it was
15 necessary to thoroughly clean both flange surfaces by scraping
16 the old gasket off in various ways. Plaintiff used a scraper
17 and/or wire brush to remove old gaskets. The process of
18 removing the gaskets generated dust, which plaintiff inhaled."

19 That's what he said in those interrogatories. And that's
20 what Garlock had available to it in the tort system without
21 reference to any form of -- proof of claim form by the trust;
22 is that right?

23 A. Yes. Would you show me, please, the standard -- the
24 specific interrogatories that asked what products he was
25 exposed to?

1 Q. You can ask Mr. Cassada to ask you that.

2 Now --

3 A. Well, that would certainly assist me in answering your
4 questions.

5 Q. Well, you've had no trouble so far.

6 Now, let's look at the trust claim forms.

7 MR. INSELBUCH: And by the way, Your Honor, I would
8 offer those interrogatories into evidence.

9 THE COURT: Okay. We'll admit that.

10 MR. INSELBUCH: That's 1 and 2. I gave you the
11 numbers for -- the GST numbers. I think you may want to
12 renumber them. I don't know, I'll leave that to people more
13 senior than I.

14 (Debtors' Exhibits Nos. GST1127 and GST1128 were
15 received into evidence.)

16 Q. Now, let's look at the proof of claim form, the AC&S
17 asbestos settlement trust proof of claim form. It's GST0677.
18 Let's look and see what he says here.

19 Page -- well, it's got a stamp down at the bottom that
20 says Waters 031 -- 0390.

21 It says, "Exposure site.

22 "Section 7: Occupational exposure to asbestos products.

23 "Exposure site 1. Site of exposure, facility, plant or
24 site name: Long Beach Naval Shipyard.

25 "City: Long Beach, California."

1 Now, I would suggest to you that's the only thing in this
2 proof of claim form that asserts exposure to an AC&S product.
3 And I ask you if you agree with that?

4 A. I would have to see the entire claim form to be able to
5 state whether I agree or disagree.

6 MR. INSELBUCH: Okay. Well, I'll hand him mine,
7 Your Honor, if that's all right. It's a little bit marked up.

8 THE COURT: All right. That's fine.

9 MR. CASSADA: Can I see it?

10 (The document was tendered to counsel for the
11 debtors.)

12 MR. INSELBUCH: Okay?

13 MR. CASSADA: Sure.

14 MR. INSELBUCH: May I approach?

15 THE COURT: Yes.

16 (The document was tendered to the witness.)

17 THE WITNESS: Thank you.

18 MR. INSELBUCH: Uh-huh.

19 THE COURT: While he's looking at that, let me ask
20 you to try to wind up five minutes after 3:00 so Mr. Cassada
21 can have 15 minutes of redirect and we can take a break before
22 we have to start Mr. Guy's witness at 3:30. Okay. We've been
23 at this for a while, so let's try to keep on our schedule and
24 be done with Professor Brickman.

25 MR. CASSADA: We were hoping to start a witness,

1 Mr. Magee.

2 THE COURT: If you get done before 3:30, we'll start
3 Mr. Magee. If not, we'll start Mr. Guy's witness.

4 MR. GUY: Thank you, Your Honor.

5 THE WITNESS: Okay.

6 Q. Do you have a question?

7 A. My question is what's the question so let me respond to
8 it?

9 MR. INSELBUCH: Could you read back the question.
10 Thank you.

11 (The following question was read by the court
12 reporter:)

13 Now, I would suggest to you that's the only thing in
14 this proof of claim form that asserts exposure to an AC&S
15 product. And I ask you if you agree with that?

16 THE WITNESS: The answer is yes, I agree that --
17 this is a site exposure claim. That is proof of exposure to
18 the product of AC&S was the work at a specific site.

19 Q. Well, let's show you -- I want to talk about the next
20 one. Let's talk about Owens Corning, again, for Mr. Taylor.
21 I think if you check the memorandum you got from Mr. Cassada's
22 firm, they also assert similarly with respect to Owens
23 Corning, I guess it's fibreboard, similarly a lack of
24 disclosure.

25 A. Yes.

1 Q. Now, you know that the Owens Corning and the Fiberboard
2 Trusts are the same trust.

3 A. Yes.

4 Q. All right. Now, let's look at the proof of claim form
5 that Mr. Taylor filed with the Owens Corning Fiberboard Trust.
6 And again, let's look at the page stamped at the bottom Waters
7 01572. Again, the page is headed "Exposure to asbestos
8 operations activities or products."

9 And then he says, "If this site is an approved OCFB site
10 list, enter the site code from Exhibit A available on
11 website." And it has site code 6002592, and it says "Long
12 Beach Naval Shipyard, Long Beach, California."

13 And if you turn to page 01576, we have another copy of
14 the same page from the form on which is inscribed "Site code
15 10016686, San Francisco Bay Naval Shipyard - Hunter's Point -
16 Building 813 - San Francisco, California."

17 I'm going to ask you the same question. Is that the
18 totality of the information about exposure that Mr. Taylor
19 provided to the Owens Corning Fiberboard Trust?

20 MR. CASSADA: Can he see the claim form to answer
21 that question?

22 MR. INSELBUCH: Sure. I'll show it to you first.
23 It's your exhibit. I just have a couple of markings on it.

24 May I approach?

25 THE COURT: Yes, sir.

1 (The document was tendered to the witness.)

2 THE WITNESS: Thank you.

3 Yes, this is a site claim. That is the proof of
4 exposure to the Owens Corning fiberboard product is the work
5 at a specific site in a certain time period.

6 Q. Well, where that is the case and where that site is
7 disclosed in the discovery, there is no new information there,
8 is there?

9 A. No more information about exposure, is that what
10 you're --

11 Q. Exposure, yes.

12 A. I think that's correct.

13 MR. INSELBUCH: May I approach and take those two
14 documents back?

15 THE COURT: Yes.

16 Q. Let's turn to Mr. Treggett. We talked about Mr. Treggett
17 before.

18 Is Mr. Treggett also one of the individuals as to which
19 Mr. Cassada's firm's memorandum asserted there was a
20 nondisclosure of exposure information that's reflected in
21 trust claims?

22 A. Yes.

23 Q. And let's just see first where -- what kind of
24 information was made available by Mr. Treggett in the tort
25 system.

1 There was something in California for the plaintiff's
2 case report. Are you familiar with that?

3 A. I'm familiar with some of the California standard
4 interrogatories.

5 Q. I'm not familiar with it either, but it was filed in the
6 Los Angeles Superior Court in this particular case. And
7 according to the materials in the proof of service in the
8 back, they were served on Coltec Industries, Inc., Garlock
9 Sealing Technologies, and EnPro Industries, Inc., and
10 something called the Baronian Law Firm. So they got served.
11 Whatever this is, they got served.

12 And I want to call your attention -- this is GST5609.
13 And call your attention to page 1, case report. I guess this
14 is in the nature of a standing form of interrogatories that
15 they have out there.

16 MR. CASSADA: Well, do you know that to be a fact?

17 MR. INSELBUCH: No, I withdraw it. I was just
18 trying to be helpful.

19 MR. CASSADA: Do you even know whether they're
20 admissible?

21 MR. INSELBUCH: I'm not asking whether they're
22 admissible.

23 Q. In the case report, the plaintiff reflects exposure
24 history. United States Navy, various U.S. Navy training
25 facilities, including Great Lakes, Illinois; Vallejo,

1 California; Idaho Falls, Idaho; New London, Connecticut; San
2 Diego, California. That's as far as the United States Navy.
3 Another employer, The Southern Pacific Railroad, brake
4 mechanic and locomotive engineer.

5 Now, further along -- that's what he says in this
6 document that was served.

7 Then in his deposition which is GST --

8 MR. CASSADA: Excuse me, when you say "he," who are
9 you referring to?

10 MR. INSELBUCH: The plaintiff.

11 MR. CASSADA: In that case report is what the
12 plaintiff says?

13 MR. INSELBUCH: I'm not the witness. Perhaps I'm
14 being a little bit too clumsy, Mr. Cassada, but Robert
15 Treggett and Linda Treggett are the plaintiffs, and this is
16 the plaintiff's case report. So I -- maybe they aren't saying
17 it, but it seems like they are.

18 Q. Now, his deposition, volume 1, which is GST5498. You've
19 seen all this material before, have you not? This was all
20 part of Mr. Cassada's report to you and footnoted carefully to
21 what to look for in here.

22 A. I don't know whether I've seen something called a case
23 file. It doesn't -- I don't recollect. But that doesn't mean
24 I haven't seen it. I just don't recollect any such --

25 Q. Memory is funny that way, isn't it?

1 A. No, it's not funny. It's serious. I've seen thousands
2 of documents. I don't recall seeing this particular one.

3 Q. And the plaintiffs have seen thousands of asbestos
4 insulated pipes, haven't they?

5 A. I don't know what the relevance of pipes is.

6 Q. All right. Let's turn to page 34.

7 A. Products is the issue.

8 Q. "When you were doing your repairs on the pumps aboard the
9 ship, was it necessary for you as a machinist mate to remove
10 or disturb any insulation or insulation material free from the
11 exterior of the pumps before your work could be done?

12 "Answer: All the time, yeah. I mean, that was the first
13 thing we usually did.

14 "Do you recall what the conditions in the air were like
15 when the insulation or lagging was removed from the pumps
16 aboard the Marshall?

17 "It was very dusty and dirty.

18 "Did you inhale that dust?

19 "Couldn't help it, yes."

20 Now, among the --

21 A. Let me interrupt you because I want to find out --

22 Q. I haven't asked a question yet.

23 A. -- what this testimony is about. Is this about his work
24 on the nuclear submarine or his time at Mare Island?

25 Q. I haven't asked the question yet.

1 Now, the trust form for Babcock and Wilcox, now at his
2 deposition -- in his claim form, he asserts exposure. And
3 when he asserts exposure, page -- this is a claim form for
4 Babcock and Wilcox, 02490, the page. "Approved B&W site:
5 33018035, Great Lakes Naval Training Center. Machinist mate."

6 And he says on a similar page, page 33042437, "United
7 States Naval Submarine Base New London."

8 And another page, 33038275, "Southern Pacific Company,
9 Los Angeles."

10 Now, was all of this information already available in the
11 discovery?

12 A. Well, if this is in the interrogatory responses, the
13 answer is yes.

14 Q. All right. I mean, I'll let you look through it if you
15 want to. Is there anything in here other than what he said in
16 his discovery responses? We can do this each time.

17 MR. CASSADA: You're talking about the form in which
18 Mr. Treggett named a specific product, Babcock and Wilcox
19 boilers and asbestos pipes?

20 MR. INSELBUCH: This is what he says here. I'm not
21 arguing with you. Can I show it to him?

22 MR. CASSADA: Sure.

23 MR. INSELBUCH: Do you want to coach him some more?

24 MR. CASSADA: I'm not coaching him. I'm just
25 pointing out to you (inaudible).

1 THE WITNESS: If he's coaching me, ask him to speak
2 louder.

3 All right. In this claim form he's asserting
4 exposure to products of Ingersoll Rand, Westinghouse, Crane,
5 Yarway, Flexitallic, Garlock, Delavau, Sharples, Westinghouse,
6 and Yarway. This is one of 10 -- 15 or more claims, trust
7 claims that Mr. Treggett asserted.

8 Q. What are you looking at?

9 A. I'm looking at the document.

10 Q. You looking at the B&W trust form?

11 A. Yes.

12 MR. INSELBUCH: I'm sorry, Judge, we only have the
13 one copy.

14 Q. Let me see what you were talking about.

15 A. I was referring to Exhibit A.

16 Q. I'll come back to this.

17 Let's talk about his proof of claim form filed with USG.
18 This is GST5492. And on this document, he says claim number
19 6286521. That's -- and down at the bottom it says, "Site:
20 60003024, Newport News Shipbuilding and Drydock, Newport News,
21 Virginia."

22 And I'm going to ask you if that's all the information
23 that's contained in that proof of claim form?

24 A. Again, I couldn't answer without looking at the proof of
25 claim form.

1 Q. What?

2 A. I couldn't answer without looking at the proof --

3 Q. Well, I'm going to give it to you.

4 A. Okay.

5 Q. Okay. I'm going to give you back B&W and USG, and I'm

6 going to ask you the same question. Isn't it true that

7 Garlock didn't learn anything new?

8 A. I'm confused.

9 Q. Well, with B&W --

10 A. Are we on the USG claim form now?

11 Q. Whichever one you want to start with.

12 A. Well, let me take a look at USG. I haven't done so yet.

13 Q. Sure.

14 A. There's several pages missing. Would you happen to have
15 pages 11 and 12? And then it skips from 22 to 34.

16 Q. I think you'll find those pages repeat. There are
17 several copies of the same page because they're separate work
18 sites on each one.

19 A. Well...

20 Q. I'll represent to you that as best we could, we gave you
21 the entire form.

22 A. I'm looking at a page numbered 13, Waters 02786, and it
23 says, "Response to interrogatory number 25," and he's listing
24 a number of activities like sandblasting and welding, and I'd
25 like to see what interrogatory question 25 is so I know what

1 he's responding to.

2 Q. Well, does it matter? If it's a response to
3 interrogatories, in the tort system the defendants have them.

4 A. I'm sorry, I didn't understand that.

5 Q. If it is a response to interrogatories --

6 A. Yeah.

7 Q. -- those interrogatories were already served on Garlock
8 in the tort system.

9 A. Yes. If that's the question whether this was served on
10 Garlock, the answer is I presume it was.

11 Q. Okay. So we're back to the basic question. Is there
12 anything new in there about exposure that wasn't served on the
13 defendants in the tort system in the tort case?

14 MR. CASSADA: Are you asking if there's anything new
15 about exposure to the product of the claims -- of the trust
16 against (inaudible).

17 MR. INSELBUCH: I think my question was clear.

18 THE COURT: Answer the question if you can.

19 THE WITNESS: I'm sorry, could you just read me back
20 the question.

21 (The following question was read by the court
22 reporter:)

23 So we're back to the basic question. Is there
24 anything new in there about exposure that wasn't served on the
25 defendants in the tort system in the tort case?

1 THE WITNESS: Well, it's a claim of exposure that
2 was not -- I'm trying to -- I don't -- I don't know -- I don't
3 offhand see any information that would be additional so I
4 really -- and I haven't read the excerpts from the depositions
5 that are contained at the end of the form.

6 Q. The depositions that were available in the tort system?

7 A. I presume the depositions were, of course, available,
8 yes, the entire deposition.

9 Q. Okay. I want to ask you about one other --

10 THE COURT: Let's try to wind it up as quickly as
11 you can.

12 MR. INSELBUCH: Okay.

13 Q. How much money have you been paid in this case?

14 A. At the time of my deposition, the calculation of your
15 counsel was that I had been paid about \$160,000 something --
16 or that I had submitted bills totalling that. I don't think I
17 had been paid that amount, but I may have been. In any event,
18 I certainly put in a lot more time since then. But I haven't
19 submitted a bill for July yet, an invoice, and I think that
20 will be a heavy month.

21 Q. Do you have some estimate how much you'll be paid for the
22 entire exercise?

23 A. Well, as I said, as of the time of my deposition, your
24 counsel advised me that I had either billed or was paid
25 something like \$160,000.

1 Q. Another hundred since then?

2 A. Another -- I don't know. I would doubt it, but I really
3 don't -- I just haven't calculated.

4 Q. Are you -- I'm sorry.

5 A. I don't know.

6 Q. You bill at \$750 an hour?

7 A. I billed all work done for Garlock up to the time of
8 writing my report at the rate of \$750 an hour; and then per
9 agreement for all work done in writing my report I billed at
10 \$925 an hour.

11 Q. And is that what you're billing as you sit here today?

12 A. Yes.

13 Q. Okay. And you're a professor at a law school, are you
14 not?

15 A. Yes.

16 Q. Do you have any overhead expenses that are affiliated
17 with this work?

18 A. Generally not.

19 Q. So that's -- all that's pure profit for you.

20 A. Me and the government, yes.

21 Q. Yeah. And how -- how, if we were to take the number
22 \$200,000, would that -- how would that compare to your total
23 earnings for any -- for a more recent given year?

24 A. Well, this is a year in which I certainly billed more
25 than most years in terms of outside work. It would represent

1 maybe a quarter or a third of my income.

2 MR. INSELBUCH: I pass the witness.

3 A. Gross.

4 THE COURT: All right. Mr. Guy.

5 MR. GUY: Your Honor, I think it's only fair that I
6 pass the witness on to Mr. Cassada, even though I do have some
7 very interesting and great questions for the witness.

8 THE COURT: I'm sure.

9 Okay. Mr. Cassada.

10 MR. CASSADA: Thank you, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. CASSADA:

13 Q. Professor Brickman, Mr. Inselbuch asked you about --
14 well, I guess we have a revelation of sorts, and that is in a
15 lot of these cases, at least, the lawyer knew of the
16 exposures.

17 A. Well, the lawyer --

18 Q. And the plaintiffs didn't, according to Mr. Inselbuch.

19 Now --

20 A. Okay.

21 Q. -- some of these cases were in the state of Texas. Did
22 you know that Texas has a Rule of Civil Procedure that says a
23 party must respond to written discovery in writing within the
24 time provided by the court or -- court order of these rules.

25 When responding to written discovery, a party must make a

1 complete response based on all information reasonably
2 available to the responding party or his attorney at the time
3 the response is made.

4 That's Rule 191.3 of the Texas Rules of Civil Procedure.
5 Are you aware of that rule?

6 A. I wasn't aware of it when I wrote my report. I did read
7 it just a short while ago.

8 Q. Did you know that other states have similar rules?

9 A. I believe I've seen rules like that before.

10 Q. Now, Mr. Inselbuch is suggesting that when someone files
11 a claim based on a work site, that there is nothing new in the
12 claim. But in the -- if the claim is for a product that
13 hasn't been disclosed in the tort system, is that something --
14 is it new information when a claimant files a work site claim?

15 A. Yes. It's a statement of exposure to a particular
16 product or products. And if he hasn't disclosed that in his
17 standard interrogatory responses or deposition or trial
18 testimony, then that's at least an inconsistency and, more
19 likely, deceitful.

20 Q. And isn't it -- in fact, I believe you described a case,
21 it was the Stoeckler case involving the Waters and Kraus firm.
22 Isn't that what happened in that case? It was discovered
23 three days into the trial that Waters --

24 A. Yes.

25 Q. -- and Kraus had filed a number of work site exposure

1 claims for its client.

2 A. Yes. The counsel for the plaintiff argued that these
3 were not statements of exposure because they were site claims,
4 which I rejected and certainly testified earlier today to that
5 effect.

6 Q. And doesn't the trust claim form itself say in the
7 language of the trust claim when you file a work site claim
8 you're alleging exposure --

9 A. Yes.

10 Q. -- to the product of the debtor?

11 A. And so does the TDP at Section 5.7 saying a claim is --
12 that a trust claim is a statement of credible and meaningful
13 exposure to the product of the debtor.

14 Q. Yeah, I believe Mr. Inselbuch was making the suggestion
15 that all you're doing there is identifying that you worked at
16 a specific work site.

17 MR. CASSADA: Can we have a copy of the Babcock and
18 Wilcox claim form.

19 Q. Here's the Babcock and Wilcox claim form that
20 Mr. Inselbuch showed you. Did you have time to note on it
21 that Mr. Treggett's lawyers on behalf of Mr. Treggett actually
22 identified specific asbestos-containing products of Babcock
23 and Wilcox to which Mr. Treggett was exposed?

24 A. Yes.

25 Q. Babcock and Wilcox boilers and asbestos cloth. Do you

1 see that?

2 A. Yes.

3 Q. And does it say date exposure began and date exposure
4 ended?

5 A. Yes, it does.

6 Q. And is there also language in the form itself that makes
7 clear when you're asserting a work site exposure, you're
8 alleging you were exposed to the product of the debtor at that
9 site and you're using the site itself to prove that point?

10 A. Yes.

11 MR. CASSADA: Can we display that language?

12 Q. This is the claim form. Do you see the language there?
13 It says, "If the site you are alleging exposure to B&W
14 products and services is not on the approved site list,
15 provide independent documentation."

16 A. Yes.

17 Q. But this allows you to actually identify exposure by the
18 work site, right?

19 A. As do many of the trusts. This -- the Babcock and Wilcox
20 trust allows a proof of claim to be asserted by identifying a
21 work site that's listed in the TDPs. So if you worked at that
22 site, that's proof of exposure to a Babcock and Wilcox
23 product.

24 Q. Let me show you the Owens Corning fiberboard form that
25 Mr. Inselbuch showed you.

1 (The document was tendered to the witness.)

2 Q. Is that the identical form with the same language and the
3 same procedure in it?

4 A. Yes, it is.

5 Q. So it requires an allegation of exposure.

6 A. Yes. As I mentioned earlier, the TDP says that in order
7 to be a claim, there must be credible and meaningful exposure.

8 Q. Okay.

9 A. In all of the trust documents. In Section 5.7 of the
10 TDPs.

11 Q. Now, Mr. Inselbuch made the point that it would be
12 unusual or difficult, maybe, to expect a plaintiff to remember
13 the names of products. In a lot of the designated plaintiff's
14 claims, were the exposure allegations based on affidavits
15 executed by the plaintiffs themselves based on personal
16 knowledge?

17 A. Yes.

18 Q. And in fact, that was the case with Mr. Golini.

19 A. Yes, it was.

20 Q. And we -- you testified about this case. Mr. Golini
21 signed 14 affidavits.

22 A. That was before the tort claim. And they were not
23 identified in the course of discovery.

24 Q. Here's an affidavit. He says, "During the course and
25 scope of my employment, from 1958 to 1968, I frequently and

1 regularly worked in close proximity with workers who
2 installed, repaired, and removed Kaylo, asbestos-containing
3 pipe covering manufactured by Owens Corning fiberglass." Do
4 you see that?

5 A. Yes. And that's -- I would indicate that's quite common
6 language in these claim forms. Frequently and regularly
7 worked in close proximity with workers who installed. That's
8 a formulaic term.

9 Q. And many trust claims are supported by affidavits by the
10 plaintiff themselves --

11 A. Yes.

12 Q. -- based on personal knowledge.

13 A. Yes.

14 Q. Okay. What's the date of this affidavit?

15 A. It's May 16, 2009.

16 Q. Now, Mr. Golini's deposition occurred after that date.

17 A. Yes, it did.

18 Q. And he had 14 other products he had identified.

19 Okay. So Mr. Golini was asked, "Do you remember the
20 names and nicknames of any of the materials that were used on
21 the pipes when you were at the shipyard at any location down
22 there?

23 "Answer: Nicknames?

24 "Question: Yeah, names of companies or did you ever hear
25 of Kaylo?

1 "No.

2 "Okay.

3 "No, I didn't ever hear of anything like that, no."

4 And, of course, he was also asked about Owens Corning as
5 well, correct?

6 "Okay. How about OCF or Owens Corning, did you see their
7 name anywhere at the shipyard?

8 "Huh-uh, no."

9 Do you see that?

10 A. Yes.

11 Q. And he had 14 other products and we asked him about those
12 at his deposition.

13 A. Yes.

14 Q. And sometimes the plaintiff submits the affidavit after
15 the tort case.

16 A. Sometimes after. In 11 of the 15 designated plaintiff
17 cases, there were assertions by the claimant or his counsel of
18 exposures before the tort claims were filed. There are also
19 assertions of exposure, that is, trust claims filed after the
20 tort case was filed.

21 Q. Now, you were asked questions about 2019 statements.

22 A. Yes.

23 Q. 2019 statements are verified, correct?

24 A. Yes, they are verified.

25 Q. That means they are affidavits.

1 A. By the attorney.

2 Q. Now, you saw the language from an opinion issued by Judge
3 Fitzgerald in the AC&S case?

4 A. Yes.

5 Q. Garlock was involved in that case?

6 A. Yes. I'm sorry --

7 Q. Yeah.

8 A. -- I lost my train of thought. Could you --

9 Q. Garlock -- you remember Garlock was the company that
10 asked for access to 2019 statements in that case.

11 A. Yes.

12 Q. And that case was overturned by the district court, Judge
13 Star.

14 A. Yes. Judge Fitzgerald's holding was overruled by the
15 district court.

16 Q. And Judge Fitzgerald, in the language that Mr. Inselbuch
17 quoted, said that 2019 statements may not be proof of a claim,
18 correct?

19 A. That's what he said, yes.

20 Q. Now, you looked at specific 2019 statements.

21 A. I've looked at many.

22 Q. 2019 statements submitted by Baron & Budd and Waters and
23 Kraus and some of the other firms that we --

24 A. Yeah, I quoted some in my report.

25 Q. Okay. Now, you quoted the amended and verified statement

1 of Baron & Budd filed under Rule 2019. And this is -- it
2 says, "I have personal knowledge of the facts set forth
3 herein. I make this verified statement pursuant to Rule 2019
4 of the Federal Rules of Bankruptcy Procedure and the court's
5 order of October 22, 2004.

6 "As of the date of this verified statement, the firm
7 represents thousands of personal injury claimants who have
8 been injured by products manufactured, marketed, distributed,
9 sold or produced by Pittsburgh Corning and others and thus
10 hold claims against inter alia the debtor." And then it
11 describes the nature of the claim.

12 Now, that's an affidavit.

13 A. Correct.

14 Q. And you understand that at least one purpose of these
15 2019 statements is to establish who gets to vote in the case.

16 A. Actually, I wasn't aware of that, but --

17 Q. Okay.

18 A. -- I'm happy to be so informed.

19 UNIDENTIFIED SPEAKER: And coached.

20 MR. CASSADA: Just trying to use the time I'm
21 allotted.

22 Q. Now, Mr. Inselbuch talked about the relationship of a
23 trust to a claimant. But the confirmation of a plan, do you
24 know whether that resolves the debtor's case against a
25 specific claimant? In other words, when the claimant files a

1 claim, does the claimant still have to prove that they were
2 exposed to and injured by the product?

3 A. Yes.

4 Q. And do they -- if they don't agree to the settlement, can
5 they still go to trial with the trust?

6 A. Yes. There is a procedure in all of the trusts that it
7 will allow a -- the claimant to leave the claim process and
8 file a lawsuit.

9 Q. You talked about who it was who drafted the plan of
10 reorganization and you said you thought it was the plaintiff's
11 lawyers.

12 A. Effectively, yes.

13 Q. Now, when you were talking about the plans of
14 reorganization, are you talking about the proposed plan or are
15 you talking about the documents that government -- the way
16 that --

17 A. Well, I was talking mainly about the TDPs.

18 Q. Okay.

19 A. That's true.

20 MR. CASSADA: Your Honor, I have several exhibits
21 I'd like to offer.

22 THE COURT: Okay.

23 MR. CASSADA: I'll have the witness identify them.

24 THE COURT: All right.

25 MR. CASSADA: They've all been identified so far in

1 his testimony.

2 You've identified GST1270 which is the Baron & Budd
3 script memo.

4 I move to admit it.

5 THE COURT: We'll admit that.

6 (Debtors' Exhibit No. GST1270 was received into
7 evidence.)

8 Q. And Professor Brickman, would you please read the
9 numbers, the exhibit numbers off of the exhibits in front of
10 you and identify them for the record.

11 A. Exhibit H. Do you want the trial exhibit number GST?

12 Q. The trial exhibit number, and then look at the second
13 page.

14 A. It's GST1531, and this is a transcript of the proceedings
15 in one of the cases that I described, the Dunford case that I
16 talked about this morning.

17 Q. Okay.

18 A. And this is a transcript of the proceedings.

19 Q. Okay.

20 A. And I have -- this is something I have looked at before.

21 And then trial Exhibit GST1150 is a transcript of the
22 Barnes Crisafi versus Georgia Pacific case. This was the
23 pretrial conference. I have read at least parts of this
24 previously and I recognize it.

25 Trial Exhibit GST0661 is the Stoeckler case,

1 S-t-o-e-c-k-l-e-r, versus American Oil. This is the case I
2 also testified about this morning and which I've written up in
3 my report and where I quoted Mr. Smith-George.

4 Trial Exhibit GST0660 is a transcript of the proceedings
5 in the Brassfield versus Alcoa case. Again, a case that I
6 described and testified about this morning. And this, as I
7 say, is a trans -- it's a motion for continuance and an
8 extensive discussion of some of the issues that I addressed
9 this morning.

10 And I believe that's it.

11 MR. CASSADA: Your Honor, I move to admit those
12 exhibits.

13 THE COURT: All right.

14 MR. INSELBUCH: No objection.

15 THE COURT: We'll admit those.

16 (Plaintiff's Exhibits Nos. GST0660, GST0771,
17 GST1150, and GST1531 were received into evidence.)

18 MR. CASSADA: Okay. I have no further questions.

19 THE COURT: All right. Let's take a break until
20 3:30.

21 And you can step down, Mr. Brickman.

22 And then we will come back and do Mr. Guy's.

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Brief recess at 3:20 p.m.)

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NORTH CAROLINA
3 CERTIFICATE OF REPORTER
4

5 I certify that the foregoing transcript is a true
6 and correct transcript from the record of proceedings in the
7 above-entitled matter.

8
9 Dated this 26th day of July 20113.

10
11
12 s/Cheryl A. Nuccio
13 Cheryl A. Nuccio, RMR-CRR
14 Official Court Reporter
15
16
17
18
19
20
21
22
23
24
25